

Paper No. ____
Filed: August 20, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COALITION FOR AFFORDABLE DRUGS IV LLC

Petitioner

v.

PHARMACYCLICS LLC

Patent Owner

Case IPR2015-01076
Patent No. 8,754,090

**PATENT OWNER'S REPLY IN SUPPORT OF ITS MOTION FOR
SANCTIONS PURSUANT TO 37 C.F.R. § 42.12**

Table of Contents

	Page
I. Congress Did Not Authorize Misconduct	1
II. The <i>Noerr-Pennington</i> Doctrine Is Inapposite Here	2
III. Due Process Was Not Violated	3
IV. The Public Interest Favors Sanctioning Misconduct.....	4

Table of Authorities

Page(s)

Cases

<i>BE & K Const. Co. v. NLRB</i> , 536 U.S. 516 (2002).....	3
<i>Loral Space & Comm'ns., Inc. v. Viasat, Inc.</i> , IPR2014-00236, Paper 9 (PTAB July 7, 2014)	2
<i>Nader v. Democratic Nat'l Comm.</i> , 555 F. Supp. 2d 137 (D.D.C. 2008).....	2, 3

Statutes

35 U.S.C. § 311(a)	1
35 U.S.C. § 316(a)(6).....	1

Other Authorities

157 Cong. Rec. S5319-03 (Sept. 6, 2011)	4
---	---

Rules

37 C.F.R. § 42.11	1
37 C.F.R. § 42.12	1

By its briefing, Petitioner concedes that its primary motive for filing the Petition is to use the IPR process to influence stock prices of publicly traded companies. Petitioner's position that its use of the process to manipulate stock markets is shielded from sanctions by the standing requirements, the *Noerr-Pennington* doctrine, and public policy is wrong. Petitioner is exploiting what it perceives to be a loophole in the IPR process, and its actions must be sanctioned.

I. CONGRESS DID NOT AUTHORIZE MISCONDUCT

Petitioner conflates the issue of whether it has standing to file the Petition with whether its use of the process constitutes misconduct, but they are separate inquiries. 35 U.S.C. § 311(a)—the statutory provision Petitioner argues confers standing—is independent from the one authorizing sanctions for misconduct—§ 316(a)(6). *See also* 37 C.F.R. § 42.12. Moreover, under § 311(a), a petitioner is “subject to the provisions of this chapter,” which includes the sanctions provision. All parties must also obey a duty of candor and good faith. 37 C.F.R. § 42.11. Thus, even if “any person” can file an IPR petition, that person still has a duty not to abuse or make improper use of the process or risk being subject to sanctions.

Petitioner does not identify which statute or regulation is “unambiguous” and why reviewing the legislative history is therefore “unwarranted.” (Resp. at 4.) The legislative history shows why the sanctions provisions were implemented and are therefore relevant to understanding their language. While curbing frivolous

petitions or repetitive claims against the same patents and parties may be exemplary types of misconduct, the plain language and legislative history make clear a broader range of misconduct is sanctionable. Petitioner offers no support for its position that Congress intended that its conduct—notably repetitive against the pharmaceutical industry as a whole—be exempt from sanctions.

Finally, *Loral Space & Comm'ns., Inc. v. Viasat, Inc.*, the only authority Petitioner offers to support that IPRs are not an alternative to litigation, does not support Petitioner's position and is quoted out of context. IPR2014-00236, Paper 9 at 7 (PTAB July 7, 2014). There, the petitioner sought to broaden the scope of the IPR procedure, which the Board declined to do in the quoted passage. *Id.* at 7.

II. THE *NOERR-PENNINGTON* DOCTRINE IS INAPPOSITE HERE

Petitioner essentially admits it is manipulating the IPR process, but then argues that the *Noerr-Pennington* doctrine provides a safe haven for it to continue its misbehavior without consequence. But *Noerr-Pennington*, typically applied only in an antitrust context, only protects “defendants who petition the government for redress of grievances.” (Resp. at 5) (citing *Nader v. Democratic Nat’l Comm.*, 555 F. Supp. 2d 137, 155 (D.D.C. 2008)). Petitioner does not and cannot allege that it suffered any grievance. Petitioner is not a licensee, a patentee, or an interested party. Because Petitioner has no grievance, *Noerr-Pennington* does not apply. Whether the Petition falls within its sham exception is irrelevant.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.